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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

HANTKE et al.

Serial No. 10/088,400

Filed: July 22, 2002

For: RATE-CONTROLLED PARTICLES



MAIL STOP *Fee Amend.*

Art Unit: 1617

Examiner: Wang

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, PO Box 1450, Alexandria, VA 22313-1450, on:

September 24, 2004

Date of Deposit Herbert B. Keil

Person Making Deposit Herbert B. Keil

Signature September 24, 2004

Date of Signature

Honorable Comm'r. of Patents
PO Box 1450
Alexandria, VA 22313-1450

RESPONSE



Sir:

09-27-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #11

Restriction has been required under 35 USC §§ 121 and 372. Each of applicants' sub-generic groups of compounds represented by formulas I to VII has been considered a distinct invention.

Within each group an election of species has been required, apparently requiring identification of a specific compound, a specific polymer matrix, and a specific surfactant.

The restriction and election of species requirements are respectfully traversed for reasons which shall be explained further below.

For purposes of examination, the following elections are provisionally made.

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Group II, i.e., the compounds defined by formula I wherein Y is CR⁵ is elected. The species within that group elected is the first compound recited in claim 13, i.e., 4-[[4-[(2,4,6-trimethylphenyl)amino]-2-pyrimidinyl]amino]benzonitrile.

The species of polymer matrix elected is a copolymer of N-vinylpyrrolidone (VP) and vinylacetate (VAC), the weight ratio of VP to VAC being 60:40. That species is disclosed at page 12, lines 16-18.

As the surfactant, applicants' elect polyethoxylated and hydrogenated Castor oil as disclosed at page 14, line 28.

All of the claims read on the elected species except for claim 5, which does not read on the elected surfactant.

As the examiner apparently recognizes, PCT Rule 13.2 considers compounds having a significant portion of common structure and properties in common represent a single general inventive concept. See in particular PCT, Annex B, Part II, e.g., example 21. The compounds of formulas I to IV share a major structural element, which is two 6-membered aromatic rings linked to each other by an amino group. The property in common is antiviral activity. See page 1, line 10, page 3, line 1, page 5, line 20, and page 7, line 1. Thus, at least with respect to formulas I to IV, they do form a generic invention within which the species represent unity of invention.


The examiner's basis for considering the polymeric matrixes and surfactants to detract from the unity of invention represented by the active compounds is not clear. Further explanation is respectfully requested.

Favorable response to this election with traverse is respectfully requested.

A check to cover the \$110.00 one month extension fee is attached.

Respectfully submitted,

KEIL & WEINKAUF

A handwritten signature in black ink, appearing to read 'Melvin Goldstein', written over the printed name.

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